

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 794 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LILABEN WD/O RATILAL GANDHI

Versus

CHAMANJI GHENAJI

Appearance:

MS KUSUM M SHAH for Petitioners
MR MA BUKHARI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the original defendants-tenants, who were sued by the respondents-plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord had sued the tenant for a decree of eviction on the ground that the tenants had changed the user of the premises from the purpose for which they were let out, and had therefore committed the breach of terms

of the tenancy. Another ground was that the tenants were in arrears of rent for more than six months and had neglected and omitted to pay the rent within 30 days of the suit notice. The trial court found against the plaintiff-landlord on the issue as to whether the tenants had changed the user of the property, but so far as the findings of arrears of more than six months of rent, and the negligence and omission on the part of the tenant to pay the same on the notice of demand are concerned, the trial court found in favour of the landlord, and therefore passed a decree under section 12(3)(a) of the Rent Act.

3. It is pertinent to note at this stage that the tenants had not replied to the suit notice, nor had they raised any dispute as to standard rent by filing an application under section 11(1) of the Rent Act. However, they had raised the dispute as to standard rent in their written statement. The trial court, therefore, while applying the provisions of section 12(3)(a) of the Rent Act, had determined only at the stage of its judgement the standard rent of the suit premises at Rs.26/- per month (inclusive of taxes).

4. The tenants being aggrieved by the decree of eviction, preferred an appeal before the lower appellate court. The lower appellate court, on a total reappraisal of the evidence on record, confirmed the findings of the trial court, and consequently confirmed the decree of eviction.

5. Hence the present revision at the instance of the tenants.

6. I am conscious of the limitations of this court while exercising jurisdiction under section 29(2) of the Bombay Rent Act. Questions of fact cannot be reagitated and concurrent findings of fact cannot be set aside merely because a different view may be possible. However, this court is bound to interfere if this court finds that the courts below have completely misapplied the facts found on record, and have not perceived the found facts in the correct legal perspective. To permit the impugned findings and judgement to remain would amount to a perversity in law and a travesty of justice. On the facts of the case I find that this is precisely the case.

7. There is no dispute as to the facts found and established by the trial court. The statutory notice at Exh.25 dated 4th July 1975 specifically claims that the

tenant was in arrears of rent for the period from 4th July 1973 to 3rd July 1975, and further specifies that these are arrears of rent for 25 months. No doubt, the suit notice claims rent on the basis of the contractual rent, whereas the real and legitimate dues of the landlord would be on the basis of the standard rent determined by the court. The standard rent which is determined by the court would necessarily relate back to the claim in the notice. On the facts of the case, the trial court determined the standard rent at Rs.26/- per month. When applied to the arrears of 25 months, it gives a figure of Rs.650/-. As against these dues, when the landlord filed suit on 21st April 1976, the tenants had already paid Rs.400/- in the Distress Proceedings and had also paid further amounts before the suit came to be filed. There is no dispute on the facts, which are also confirmed by the calculation of learned counsel for the respondent-landlord, that prior to the date of the suit a sum of Rs.680/- had been paid or deposited. Thus, on the date of filing of the suit there were no dues from the tenants at all.

8. Both the courts below failed to appreciate the question of principle that although the claim in the suit notice may not have been met within 30 days as contemplated by section 12(3)(a), it does not necessarily follow that a decree for eviction must be passed by blindly applying the said provision. On the facts of the case it is found that although the claim in the suit notice was not met within 30 days, the tenant had paid up and in fact paid excess of the amount due to the landlord on the basis of standard rent determined in the suit, before the filing of the suit. It, therefore, necessarily follows that on the date of the suit the landlord had no cause of action at all. Therefore no decree of eviction could have been passed by virtue of section 12(1) of the Bombay Rent Act.

9. In the premises aforesaid, the impugned judgements of both the courts below are required to be quashed and set aside. It is accordingly directed. Consequently this revision is allowed. Rule is made absolute with no order as to costs.

ar